D.B. CIVIL SPECIAL APPEAL NO.8/2006

Date :: 18.05.2006

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR.JUSTICE RAJENDRA PRASAD VYAS

Mr.K.N. Joshi, for the appellant.
Mr.B.R. Mehta, for the respondents.

Having heard learned counsel for the parties. We are of the opinion that there is no merit in this appeal.

The respondents-plaintiffs have filed a suit for permanent injunction restraining the defendant-appellant from interfering with his possession. The plaintiffs have failed before the Revenue Court and their suit was dismissed. This has led to filing of writ petition.

The principal contention on behalf of the plaintiffs was that the plaintiffs have led their evidence to prove his case by producing documentary as well as oral evidence, but no evidence was led by the defendants and, therefore, the courts were not justified in rejecting the un-rebutted evidence of the plaintiffs.

It appears that considering this argument, both the parties had agreed before the learned Single Judge that since the defendant did not had adequate opportunity to lead his evidence of defence in rebuttal, opportunity be given to defendant to lead his evidence.

The learned Single Judge therefore recorded that both

the learned counsel agree, that the defendants did not get adequate opportunity to lead evidence and prove the documents, and therefore, impugned orders of all the three courts below may be set aside, and matter may be remanded back to the trial court.

It is on the submission made jointly by both the learned counsel appearing for the plaintiff and defendants that the learned Single Judge has set aside the orders of the three courts and directed the trial court to give opportunity to the defendants to lead evidence and then to decide the matter afresh.

We see no justification in entertaining this appeal against an order which was invited by agreement. The appeal fails and is hereby dismissed.

[R.P. VYAS],J. **[RAJESH BALIA],J.**

Ashwini/-